



*Connecticut Chapter  
645 Farmington Ave.  
Hartford, Connecticut 06105  
[www.connecticut.sierraclub.org](http://www.connecticut.sierraclub.org)*

Martin Mador, Legislative Chair

Public Health Committee  
March 12, 2010

Testimony In Opposition to  
HB 5477 AAC The Clean Water Act and Stream Flow Regulations (Section 2)

I am Martin Mador, 130 Highland Ave., Hamden, CT 06518. I am the volunteer Legislative Chair for the Sierra Club Connecticut Chapter. I am a director of the statewide Rivers Alliance, and a Director and Past President of the Quinnipiac River Watershed Association. I hold a Masters of Environmental Management from the Yale School of Forestry and Environmental Studies.

HB 5477, Section 2, is simply a bad bill. It is bad policy for water management in the state. It is bad policy because of the legislative interference with the process of development and acceptance of agency regulations. It is bad policy for the terrible precedent it would set.

The legislature in 2005 through PA 05-142 ordered DEP to prepare streamflow regulations. This was the result of dry stream conditions such as the Fenton River, and the Shepaug river controversy which consumed many millions of dollars in legal fees. Many stakeholders and experts participated on several workgroups which helped to write the regulations. Commissioner McCarthy issued a report in January 2009, which explained the basis for the forthcoming regulations. Her cover letter to that report, and the background page which enumerates the composition of the workgroups, are attached here.

The draft regulations were issued last fall, and a notice of intent to adopt regulations published "pursuant to sections 4-168 and 22a-6 of the Connecticut General Statutes, and section 22a-3a-3 of Regulations of Connecticut State Agencies ("RCSA")". A public hearing was subsequently held, and almost 400 separate comments were submitted from individuals, businesses, organizations, water companies, towns, DECD, Dept. of Public Health, EPA, Dept. Of Agriculture, Office of Consumer Counsel, DPUC, the CEQ, and, as it turns out, one dog named "Squeek".

The DEP has taken the testimony and comments, and is now working on revisions to the draft regulations in response.

If HB 5477 is enacted, it will bring this process, which has been conducted over a five year period strictly according to state law, to a halt. It will require such an exhaustive examination of the consequences of the regulations that, in my view, will prevent them from ever being adopted.

The bill would require that DEP, in about 6 months, conduct a stream evaluation far more intense than the draft regulations call for over a five year period. It would require resources certainly far beyond the agency's current capacity. It would allow DPH to essentially veto the planned regulations based on the water companies current infrastructure, putting the burden on the

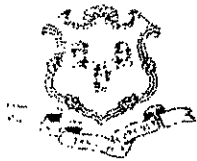
---

\*He was in favor of the regs. Coincidentally, in separate testimony, so was his owner.

DEP to develop any necessary expansion plans. It would then put the plans in the hands of the DPUC, which is not at all the same thing as providing for DPUC input on the DEP regulations development process. Does the DPUC have this power anywhere in state statute?

The DEP has devised regulations which balance the ecological needs of the stream with the consumptive needs of water users. They use sound science to provide for the minimum flow necessary to keep a stream alive. In some cases, this may require the water companies to lay pipe, or engineer a flow release mechanism for a dam. In my view, this ecological protection should have been done many, many decades ago. It is only in 2010 that the water companies will be asked to provide these protections. Yes, some have been good stewards of the environment. Some have not. Many water companies have ongoing engineering projects, with significant costs. These new draft regulations would simply become part of that process.

I do not feel that it is appropriate for the legislature to interfere in the ongoing process of regulation preparation without justification or statutory authorization. In my experience, this bill would constitute an unprecedented attempt of the legislature to devastate an ongoing agency process. It would set a very dangerous and debilitating precedent that could only cripple agency morale, potentially cause years of agency effort to be discarded without benefit, and cripple agency regulatory creation for years to come.



Gina McCarthy  
Commissioner

**STATE OF CONNECTICUT**  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

79 ELM STREET HARTFORD, CT 06106 5127

PHONE: 860-424-3001



January 29, 2009

**A message from the Commissioner**

I am pleased to release the attached report that outlines a framework for regulating Stream Flow Standards here in Connecticut. The report is written in "plain language" to allow the general public as well as the regulated community to understand how we intend to meet the mandates of PA 05-142 by balancing stream flow needs to support human uses while maintaining the ecological health of our flowing waters.

As the many experts who dedicated countless hours of their time over the past three years to help DEP develop this framework will undoubtedly attest, regulating stream flows is a new and very challenging endeavor. But, as a result of their input and the on-going efforts of DEP staff, we were able to design an approach that takes advantage of the best available science, is consistent with sound public policy, and is feasible to implement. It includes many innovative elements that represent a significant step forward in how Connecticut manages its water resources and it ensures that the desired result can be achieved in the least disruptive and most cost-effective way. For example, it incorporates a phased implementation strategy to encourage effective planning and better management of water supplies as a way to avoid the need for costly infrastructure improvements to balance human use with ecological health.

In short, while the proposed Stream Flow Standards are protective of Connecticut's river and stream systems, the proposal is not simply about providing more water for fish. It's about promoting better, more efficient management of our water supplies so that all needs, both human and ecological, can be met both today and in the future.

I want to thank the members of the Commissioner's Advisory Group as well as the Science & Technical Workgroup and the Policy & Implementation Workgroup for all their hard work, patience and frank discussion. I also want to recognize the dedicated staff here at DEP who worked tirelessly to get us on this pathway forward. Through your efforts we have developed a smart, flexible, science-based, practical approach to stream flow regulations in Connecticut that could very well be a model for other states in this region and across the nation. I look forward to the release of the draft regulations and the public engagement that will follow.

  
Gina McCarthy  
Commissioner

## **Stream Flow: The Next Two Decades**

### **Background**

The Connecticut Department of Environmental Protection is proposing revisions to the Stream Flow Standards in response to PA 05-142, enacted in 2005. This statute directed DEP to develop regulations that would expand the coverage of the stream flow standards to include all rivers and streams rather than only those stocked with fish as was the case previously. The statute further directed DEP to develop standards that balance the needs of humans to use water for drinking, washing, fire protection, irrigation, manufacturing, and recreation with the needs of fish and wildlife that also depend on the availability of water to sustain healthy, natural communities.

Two workgroups were convened by DEP to assist in the process of developing the revised regulations. A Science and Technical Workgroup was formed consisting of recognized experts in the fields of stream and river ecology, fisheries biology, hydrology, and drinking water supply management to insure that the regulations would be based on the best available science. A Policy and Implementation Workgroup was also convened to evaluate various policy options relating to implementing the revised regulations. This workgroup included members representing the interests of municipalities, water utilities, environmental advocacy organizations, and State agencies such as the Departments of Public Health and Agriculture. Both Workgroups met numerous times over the course of three years and actively participated in the development of the revised regulations. A Commissioner's Advisory Group was also formed to provide DEP with a broad perspective on the potential impact of the revised regulations on water utilities, farmers, industry, consumers, and citizens who recreate in Connecticut waters or simply have a strong interest in preserving Connecticut's natural environment. As directed by the statute, DEP consulted with other State agencies, such as the Department of Public Health, the Department of Agriculture, the Department of Public Utility Control, and the Office of Policy and Management as well as non-governmental stakeholders.

The Stream Flow Standards require two separate but related activities. First, the proposed regulation requires that all rivers and streams be classified into one of four Classes. Each Class represents a different balancing of human use and ecological health priorities. The classification adopted for a stream informs future decisions regarding how that specific resource will be managed. The proposed regulation establishes a public process for classifying streams and identifies the key considerations for determining what Class is appropriate for specific waters. Once a stream has been classified, a series of requirements are imposed on the operators of dams that regulate stream flow and those who remove water directly from streams or pump significant quantities of ground water from aquifers that sustain the flow of streams and rivers during dry periods. These requirements are phased in over time to allow current users to adjust their operations to comply with the new regulations without unduly disrupting the supply of water available for human use. Second, the proposed regulation also provides the option of adopting a Flow Management Plan for a watershed as an alternative to complying with the specific requirements (presumptive standards) relating to dam releases or maximum stream depletion specified in the regulation. Such a plan might impose different